

# **COMMITTEE ON LICENSING STANDARDS**

**Recommendations for Proposed Changes to  
Licensing Standards**

**April 2010**

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# Background

The 80<sup>th</sup> Texas Legislature created the Committee on Licensing Standards to make recommendations to the Legislature and the Department of Family and Protective Services (DFPS) for policy and statutory changes relating to licensing standards and facility inspections. The Human Resources Code charges the Committee on Licensing Standards with reviewing and analyzing information provided by DFPS and Committee members, including:

- a review and analysis of the deaths of children in substitute care;
- types of licensing violations by risk;
- details of administrative reviews and appeals; and
- the type and quality of technical assistance provided.<sup>1</sup>

The Committee on Licensing Standards is required to meet at least twice per year and is composed of seven members appointed by the Governor. Membership is varied across a comprehensive range of disciplines, as outlined in statute, and current members of the Committee are as follows:

***Presiding Officer***  
**Karyn Purvis, Ph.D.**

Fort Worth, Texas  
Director, Texas Christian University Institute of Child Development

***Members***

**Dan Adams**

Amarillo, Texas  
President and CEO of Cal Farley's Boys Ranch and Cal Farley's Boys Ranch Foundation

**Adriene J. Driggers**

San Antonio, Texas  
DFPS District Director, Child Care Licensing

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<sup>1</sup> Statute §42.0221 Human Resources Code:

The committee shall review and analyze the information provided by the department and committee members and shall make recommendations for policy and statutory changes relating to licensing standards and facility inspections. The review and analysis by the committee shall include the analysis of:

The deaths of children who are in substitute care, including reports and findings of child fatality review teams under Subchapter F, Chapter 264, Family Code;

The types of licensing violations for each weighted risk and region;

The details of administrative reviews and appeals; and

The type of technical assistance provided and the qualifications of those providing technical assistance.

The committee shall report its findings and recommendations to the department and the legislature not later than December 1 of each year.

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## **Review, Evaluation, Development of Standards**

Chapter 42 of the Texas Human Resources Code requires DFPS to regulate child care and child-placing activities in Texas, to investigate alleged abuse/neglect in child-care facilities, and to create and enforce minimum standards. To accomplish this mandate, the Child Care Licensing division of DFPS develops rules for child care in Texas. Once proposed, reviewed, and adopted, these rules become part of the Texas Administrative Code (Child Care Licensing Rules). Each set of minimum standards is based on a particular chapter of the Texas Administrative Code and the corresponding child care operation type. Minimum standards are designed to mitigate risk for children providing basic requirements to protect the health, safety, and well-being of children while they are in out-of-home settings.

Human Resources Code, Chapter 42, also requires DFPS to conduct a comprehensive review of all minimum standards at least every six years. A review can result in no changes, some changes, or substantive changes to the minimum standards. The last comprehensive review for child day care standards was completed in 2003, therefore DFPS is conducting a review of these standards again. The last comprehensive review for 24-hour residential care standards was completed in 2007. Although six years have not passed, DFPS is conducting an evaluation or modified review of the current 24-hour residential care standards to ensure they are having the intended outcome for children in care.

The 81<sup>st</sup> Texas Legislature, with passage of Senate Bill 68, created three additional types of licensed operations: before and after school care programs, school age/skills based programs, and temporary shelters providing child day care services. Along with the creation of new licensed types of child care operations, the legislation also charged DFPS with developing a more narrowly

tailored set of licensing standards for these operations. Additionally, Senate Bill 68 outlined specific duties of DFPS to convene temporary workgroups to advise DFPS regarding the proposed standards. Five workgroups composed of at least six members from diverse geographic regions including child care operators, child care advocates, parents and DFPS staff were formed to review child day care standards, evaluate residential standards, and create standards for new operation types. These workgroups were co-chaired by members of the Committee on Licensing Standards and the resulting Committee recommendations are the subject of this report.

Prior to proposing any changes to the minimum standards, a focused effort was made by DFPS to obtain stakeholder input and recommendations for changes or additions to the standards, and identify standards no longer needed. DFPS' first step in the review process was to conduct a provider online survey open to permit holders and caregivers, as well as child care advocates and others interested in commenting on the standards. A survey designed to get feedback from parents on how they select a child care program as well as their experiences in looking for and using child care was also conducted by DFPS. Separate surveys were developed to address the unique characteristics of child day care and 24-hour residential care.

The provider surveys were open from June 15 through July 31, 2009. Licensing sent an email or postcard to all licensed providers to inform them about the surveys. While the surveys were web-based, if a provider did not have internet access, paper copies were available upon request. Respondents were asked to indicate the type of operation they were affiliated with and to indicate their role in conjunction with the child care operation – such as director or administrator, caregiver, foster or adoptive parent, advocate, service provider, executive or direct care staff. Questions were open-ended allowing respondents to address multiple topics related to child care such as group sizes, activities, food and nutrition, recordkeeping, etc. The child day care survey results identified specific areas of provider concerns including child/caregiver ratios and group sizes, and caregiver and director training and qualifications. The response rate was relatively high for the 24-hour residential care provider survey. There were multiple comments regarding the differences between standards for facilities caring for large groups of children and standards for foster care settings.

DFPS has structured multiple opportunities for stakeholder input including:

- **Regional Stakeholder Meetings.** During September 2009 and October 2009, there were 41 meetings held in 18 cities for child day care providers and 3 regional meetings in 3 larger metropolitan cities were held for 24-hour residential care providers.
- **Fiscal Impact Surveys.** These surveys, conducted by DFPS, are designed to help gauge the potential impact proposed changes may have on the availability and affordability of care.

- Email. DFPS has made email boxes available for providers and other interested persons to provide comments, recommendations and ideas for changes to the minimum standards. These email boxes will remain open during and after the review to ensure providers and stakeholders have the opportunity to be heard.
- Public Comment. DFPS proposed changes to minimum standards are scheduled to be published in the Texas Register in May/June of 2010 followed by a 30-day public comment period.

As described in the December 2009 Committee on Licensing Standards Annual Report, the Committee on Licensing Standards held a public meeting in Austin, Texas, on September 9, 2009 to provide stakeholders with an opportunity to share their input directly to the committee members. The meeting was divided into two 2-hour sessions – one for child day care and one for 24-hour residential care providers. Approximately 180 stakeholders attended and in many instances, echoed the results of the surveys. During the public hearing, comments regarding specific licensing standards for child day care centers and homes included:

- Restrictive limits on the use of outdoor equipment: use of “bounce houses” and the requirement of having mulch or soft landing surfaces around playground equipment.
- Training hours: requirement of “pre-service” training hours, and the need to raise the number of pre-service training hours.
- Debate about child-to-caregiver ratios and groups sizes, with some calling for smaller group sizes and child-to-caregiver ratios, and others concerned about the financial impact of limiting enrollment or requiring more caregiver staff.
- Qualifications of directors: there was some disagreement among providers in terms of levels of training and qualifications required of teachers and directors. Child advocacy associations and some child care providers assert that more training and certification in child development should be required.
- Co-mingling children in programs under different regulatory requirements: much concern was brought forth regarding co-mingling of children in child day care, after school, and unlicensed programs in terms of sharing facilities, etc. Additional concerns in this area were regulations in some cases creating unnecessary barriers to management and staffing of multiple types of programs operating in proximity to one another.
- Standards related to nutrition and physical activity that could help reduce childhood obesity.
- School-age programs: several child-care providers felt that the child day care center regulations were not appropriate for their school-age programs.

Comments regarding specific licensing standards for 24-hour residential child-care facilities, child-placing agencies and foster homes included:

- Concerns over the disparity in regulations between facility settings and foster homes and a desire to allow for a less institutional framework for children's homes.
- Requests to revisit the requirement for Child-Placing Agencies to obtain a separate license for each DFPS region.
- Desire to allow children to have normal childhood experiences. For example, some providers felt that the standards prevented children in a facility setting from swimming in a hotel pool unless there was a lifeguard.
- Confusion and concern around different regional fire inspection requirements that affect foster homes because of the requirement to pass a fire inspection and the lack of consistency between municipal, county, and state fire safety requirements.
- A general request to reduce paperwork requirements in the regulations.

In response to the issues and concerns brought forth at the public hearing for child day care, 24-hour residential care, and school-age programs, the Committee on Licensing Standards took an active leadership role in the current review and evaluation of licensing standards as well as the development of standards for the three new types of care created by the 81<sup>st</sup> Legislature. Each Committee member co-chaired a temporary workgroup, either in child day care, 24-hour residential care, school-age, or temporary shelter standards, in order to receive additional provider and stakeholder input regarding development of new standards or needed additions or changes to existing standards. At the conclusion of these temporary workgroups in February 2010, the co-chairs for each workgroup presented their recommendations to the full Committee on Licensing Standards, which in turn, will make its recommendations on April 20, 2010, to the DFPS Council and DFPS Commissioner for creating, maintaining, changing, or deleting specific minimum standards.

## **Major Themes and Recommendations for Child Day Care Standards**

Workgroup themes regarding Child Day Care Centers and Homes:

Although there were some concerns regarding cost and accessibility, the majority of workgroup members requested and supported increasing caregiver and director training hour requirements, decreasing group sizes and child/caregiver ratios, and recommended the changes be phased in over time to lessen the financial impact to providers and costs that might be passed on to parents.

Other major themes included limiting the amount of screen time activities, addressing childhood obesity through increased activities and dietary adjustments, indoor and outdoor equipment requirements, and designating the percentage of time or the number of hours directors are required to be present at the operation.

## Recommendations for Changes to Child Day Care Standards:

### Training Hours:

Research and expert opinion supports a positive relationship between the quality and amount of training provided to child care workers and the quality of child care services rendered. The child day care standards workgroup identified several options for increasing both pre-service and annual training requirements for both caregivers and directors. The Committee on Licensing Standards supports increased pre-service and annual training hour requirements for both caregivers and directors and recommends pre-service training be increased 16 to 40 hours, and annual training be increased between 25 and 40 hours. The Committee on Licensing Standards would also support allowing the pre-service hours count toward the annual training requirements during that first year.

However, at this time, DFPS is not moving forward with proposing rule changes to increase training hours given the specific language in statute regarding the number of training hours required. DFPS is pursuing an opinion from the Office of the Attorney General to clarify whether authority exists to make changes to required making via the rule making process. Should the resulting opinion be that DFPS does have authority to increase training hours by rule, there will be additional opportunities this summer or fall to propose changes to the minimum standards related to training hours.

### Caregiver-to-Child Ratios:

While currently unable to proceed with proposing rules to increase training hours, DFPS is proposing rule changes, based on input received at stakeholder meetings and workgroups, to lower caregiver-to-child ratios for 2 and 3 year olds, combine children 18-23 months with 2 year olds resulting in one specified age group 18-35 months, and lower ratios for 5 years olds and children age 6 through 12 years.

### Childhood Obesity:

- revising activity plans to limit the amount of screen time activities (2 hours maximum for children age 2 and above),
- requiring opportunities for outdoor play in the morning and afternoon (children 18 months and older),
- limiting amount of juice and requiring water be served at all meals, snacks, and after active play,

### Other significant proposed rule changes include:

- expanding the training topics providers can choose from (attachment, responsive caregiving, communication),



- explicitly recognizing trainers in the Texas Trainer Registry, and
- specifying the number of hours a director must be present during operating hours (75% or 30 hours).

The Committee on Licensing Standards supports these proposed changes be published in the Texas Register for public comment.

## **Major Themes and Recommendations for 24-Hour Residential Care Standards**

Workgroup themes for General Residential Operations (GROs) and Child-Placing Agencies (CPAs):

Major themes for GROs and CPAs focused on modifying the annual financial audit requirements, clarifying supervision expectations, clarifying serious incident reporting requirements, and adjusting ratio requirements in certain circumstances.

Major workgroup themes specific to GROs included:

- Increasing flexibility regarding ratios by:
  - clarifying that ratios can be calculated for each group of children rather than the entire operation, and
  - clarifying that children may participate in unsupervised activities under certain circumstances.
- Revising ratios for swimming requirements,
- Developing standards specific to cottage homes in order to allow them to operate more like foster homes, including the ability to be out of ratio for short periods of time in some circumstances, and
- Revising the treatment director threshold (25 or more children or more than 30% of children in care receiving treatment services) to match the threshold in child-placing agency standards (30 or more children or more than 50% of children). This formula is also used in other GRO personnel requirements and in training requirements.

Major workgroup themes specific to CPAs included:

- Repealing the requirement for foster care CPAs to have one license per DFPS region and replacing this with staffing requirements based on either caseloads or geographical distance from foster homes,
- Adding requirements for actions a CPA must take when a branch office closes due to corrective and adverse action,
- Adding a training exception for foster parents who are absent from the home on an extended basis for military service or as a condition of employment,
- Revising requirements for foster home fire inspections,

- Allowing trampolines at foster homes, with specific safety and supervision requirements, and
- Clarifying child/caregiver ratio requirements by:
  - adding to the rules clarifications related to ratios already communicated via Licensing Frequently Asked Questions, and
  - clarifying that children may participate in unsupervised activities under certain circumstances.

#### Recommendations for Changes to Standards for General Residential Operations and Child Placing Agencies:

DFPS is proposing rule changes for GROs and CPAs to require an annual financial review, instead of an annual financial audit. CPAs also have the option to show proof of reserve funds equal to at least three months of operating expense in lieu of an annual financial review. DFPS is also proposing rule changes that will clarify serious incident reporting and rule changes to clarify ratio and supervision requirements.

Specific to GROs, there are rule revisions being proposed by DFPS to base ratios on a group of children and not the facility in its entirety, allow certain unsupervised activities, add multiple cottage home standards to more closely approximate foster homes, and revise the treatment services threshold at which certain professional staff and training requirements apply.

Specific to CPAs, there are rule revisions being proposed by DFPS to require additional staff based on either caseloads or geographical distance from foster homes (in lieu of requiring a separate license for each DFPS region in which the CPA offers foster care services), add a training exception for foster parents who are absent from the home on an extended basis for military service or as a condition of employment, revise requirements for foster home fire inspections, allow trampolines at foster homes (with specific safety and supervision requirements), and clarify child/caregiver ratio requirements and circumstances under which a child can participate in unsupervised activities.

The Committee on Licensing Standards supports these proposed changes be published in the Texas Register for public comment.

## Major Themes and Recommendations for School-Age Standards

Workgroup themes for School-Age and Before and After School programs:

Senate Bill 68 amended the Human Resources Code to create before-school and after-school programs and school-age programs. These two new types of child

care operations provide care to children who attend pre-kindergarten through sixth grade before and/or after the customary school day and during school holidays for at least two hours a day, three days per week. In addition, school-age programs provide care and supervision along with recreational or skills instruction and any other time that school is not in session.

Some before or after school and school age programs are currently licensed as child care centers and Senate Bill 68 provides for the opportunity for DFPS to tailor a set of minimum standards to better address the unique characteristics of these types of operations, beginning September 1, 2010.

The workgroup on School-Age standards began its work by reviewing the child day care standards to determine, of these, which could be readily applied to school age and before and after school programs and areas which would require additional focus and discussion. Major themes addressed by the workgroup included:

- Distinguishing between directors for single versus multi-site locations,
- Recognizing a site director level for multi-site locations,
- Developing criteria and qualifications specific to youth development and the needs of older children,
- Reducing child-caregiver ratios and groups sizes, and
- Developing additional criteria for operations that serve pre-kindergarten age children.

Recommendations for Creating Standards for School-Age and Before and After School programs:

With the input and suggestions from the School-Age workgroup, DFPS has developed a set of proposed minimum standards for the regulation of a broad spectrum of programs types. Rules being proposed by DFPS will be housed in an independent set of standards which will address the full range of categories for compliance and regulatory activities such as administration, operating policies, personnel responsibilities, training, supervision, activity plans, food and nutrition, space and equipment requirements, and safety precaution. Additionally, DFPS is proposing rules:

- Creating program and site director qualifications for multi-site programs,
- Identifying transportation safety training,
- Clarifying indoor and outdoor space requirements,
- Clarifying sanitation and fire inspections for operations located in public schools,
- Creating active play space and equipment requirements,
- Recognizing a wider array of training and experience to qualify school-age caregivers and directors,

- Recognizing different discipline and equipment uses in programs for whom the instruction of a single skill is fundamental to the core purpose of the program and for which parental consent is obtained, and
- Addressing childhood obesity through activity and nutrition requirements.

The Committee on Licensing Standards supports these proposed changes be published in the Texas Register for public comment.

## **Major Themes and Recommendations for Temporary Shelter Standards**

Workgroup themes for Temporary Shelters Providing Child Day Care Services:

The Texas Council on Family Violence (TCVF) and HHSC worked in collaboration with DFPS on licensure requirements and the creation of minimum standards for temporary shelters providing child day care services. Some opportunities for further work and issue resolution have been presented around issues related to streamlined application processes, waiving of fees, and requirements for inspections or investigations.

Recommendations for Creating Standards for Temporary Shelters Providing Child day care Services:

- Revise licensing confidentiality rules to include the location of family violence shelters and the identity of persons receiving services from family violence shelters, and
- Adopt a new chapter of minimum standards specifically crafted for temporary shelters. These new rules have been developed with significant participation from family violence shelters, which are anticipated to be the majority of shelters seeking this license type. The proposed rules include requirements that both ensure child safety and minimize fiscal impact to temporary shelters, as these are all non-profit entities.

While the Committee on Licensing Standards did not host a workgroup on standards for temporary shelters, the Committee believes these changes proposed by DFPS under statutory direction were noteworthy and should be presented in this report.

## **Additional Recommendations**

The Committee on Licensing Standards understands that minimum standards represent the basic level of health and safety requirements operations must meet in order to be in compliance with regulation. However, there is also an important

need for quality-centered resources to be readily available to the child care industry and its consumers as a whole. The Committee on Licensing Standards believes opportunities exist for identifying resources and training materials to provide additional information regarding quality aspects of child-care programming aimed at enhancing child development. The Committee also believes ease of access to quality-focused resources would complement current and proposed licensing standards designed to ensure the health and safety of children who attend or reside in child care facilities and homes. The Committee on Licensing Standards is working on recommendations for resource and training materials that could positively impact quality outside of the regulatory arena.

## **Conclusion**

The Committee on Licensing Standards has been in existence for approximately eighteen months and has a solid dedication to its responsibility to study Licensing issues and make recommendations for statutory or policy changes. The Committee on Licensing Standards has participated in the first stage of the review of child day care standards, evaluation of 24- hour residential care standards, and the development of standards for school-age programs and before and after school programs. The Committee on Licensing Standards supports the proposed rules be published in the Texas Register for public comment.

The Committee on Licensing Standards believes the recommendations contained in this report will enhance outcomes for children and families served by Texas child care programs. The Committee remains grateful for the public input received and will continue soliciting feedback on licensing issues through additional public meetings and through its ongoing work to evaluate licensing issues and make recommendations for changes.

The Committee on Licensing Standards will submit its annual report to Legislative leadership and DFPS in December 2010.

## **Appendix A**

The Child-Care Licensing (CCL) Division is responsible for protecting the health, safety, and well-being of children who are not in the immediate care of their families while they attend or reside in regulated child-care operations and homes or while they are in the process of being adopted. Through a process mandated by Chapters 42 and 43 of the Human Resources Code, CCL develops licensing standards for regulated operations and homes as well as policies and procedures for enforcing those standards. CCL is responsible for inspecting child-care operations as well as investigating reports alleging violations of Licensing standards or abuse, neglect, or exploitation of children in care. CCL also licenses child care administrators and child-placing agency administrators.

CCL has an additional role of providing technical assistance and training to potential applicants and child-care providers about meeting and maintaining compliance with licensing standards. To help inform placement decisions and child-care selection, CCL provides information to parents and other consumers about the types of child-care available, locations of child-care operations and homes in Texas, and the results of licensing inspections and investigations.

CCL regulates three categories of child care operations: Listed Family Homes, Registered Child Care Homes, and Licensed Operations (Child Day Care and 24-hour Residential Care).

### **Listed Family Homes**

Listed Family Homes provide child care on a regular basis (at least 4 hours per day, 3 or more days a week, for 3 or more consecutive weeks) in their own homes for 1-3 unrelated children. Providers are required to go through an application process that includes a criminal background check and issuance of a certificate. Listed Family Home providers must be at least 18 years old. However, there are no licensing standards, orientation class, or training requirements for listed homes. They are not inspected unless a report is received alleging the child care being offered is subject to increased regulation. Allegations of abuse or neglect of children in the care of Listed Family Homes are investigated by CCL.

### **Registered Child Care Homes**

Registered Child Care Homes provide care in the caregiver's home for up to 6 children under age 14, and they may also take in up to 6 more elementary school children. The number of children allowed in a home is determined by the ages of the children. No more than 12 children can be in care at any time, including children of the caregiver. The application process requires that a provider complete an orientation class and receive clearances on background checks. A

registration certificate is issued after CCL staff completes an on-site inspection to ensure the provider is meeting standards promulgated specifically for these settings. Registered homes are inspected by CCL every 1-2 years and if a report is received related to child abuse/neglect or standards violations.

## **Licensed Operations**

All licensed operations have specific licensing standards they are required to follow, and these operations are routinely monitored and inspected by CCL. The application process requires that a provider complete an orientation class, and background checks are conducted. A license is issued after CCL staff completes an on-site inspection to ensure licensing standards are met. Operations are inspected at least annually or more often if there are reports of alleged child abuse/neglect or violations of standards. Licensed Operations include child day care and 24-hour residential care:

### **Child Day Care**

- Licensed Child-Care Homes provide care for less than 24 hours per day for 7-12 children under 14 years old.
- Child Care Centers are any operation, which cares for 13 or more children under 14 years old, for less than 24 hours.

### **24-Hour Residential Care**

- Foster Family Homes provide 24-hour care for 6 or fewer children under 18 years old.
- Foster Group Homes provide 24-hour care for 7 to 12 children under 18 years old.
- General Residential Operations and Residential Treatment Centers provide 24-hour care for 13 or more children under 18 years old and may provide various treatment services or programmatic services.
- Child-Placing Agencies are persons or organizations other than a child's natural parent or guardian who plan for placement of a child or place a child in a child care facility, foster home, or adoptive home.
- Maternity homes provide 24-hour care for four or more minor and/or adult women and their children during pregnancy and/or during the six-week postpartum period, within a period of 12 months.